

1 asbestos liabilities, have you?

2 A Other than the Fuller Austin insulation  
3 company, no.

4 Q Were you an executive of Fuller Austin, or  
5 are you a trustee of a trust?

6 A I'm on the board of directors, but I'm not  
7 an officer other than that. But that's -- I'm  
8 mentioning it for completeness. I don't think  
9 that's what you were asking me about, but there is  
10 that.

11 Q Have you been on the board of directors of  
12 any other companies besides Legal Analysis in the  
13 last 20 years?

14 A Trust Services, Inc., which is a  
15 consortium -- it's a company owned by a consortium  
16 of trusts to manage asbestos claims liquidation  
17 proceedings. Again, it's related to my service as a  
18 trustee of Fuller Austin. It's one of the trusts  
19 that owns Trust Services.

20 Q Are you on the board of Trust Services,  
21 Inc.?

22 A Yes.

23 Q Do you have any other role at Trust  
24 Services, Inc.?

25 A I was chairman of the board at one point,

1 but other than that, no.

2 Q Were you ever an employee of trust  
3 services, Inc.?

4 A Not an employee, no.

5 Q Were you ever retained as a consultant,  
6 apart from your role as a board member or chairman  
7 of the board for trust services, Inc.?

8 A I think some of the work I've done is a  
9 consultant to Trust Services, but I'm not certain of  
10 that.

11 Q And which trusts does trust services  
12 provide services to?

13 A Well, it's owned jointly by the National  
14 Gypsum trust, the Fuller Austin trust, and the DII  
15 trust. And it also performs services for three or  
16 four other trusts, Swann, S-w-a-n-n. I'm not going  
17 to remember them all. Eagle-Picher, Celotex. There  
18 are a couple other small trusts.

19 Q Back to the estimates that you said you  
20 had done on a confidential basis for some companies,  
21 what was the context of those?

22 A I was asked to do them. The companies  
23 wanted to get some statement of what their  
24 liabilities were. I assume they were related to  
25 some transactions they may be doing, but I really

1 didn't get into details with regard to why it is  
2 they wanted the forecasts.

3 Q Were any of them for potential acquirors  
4 of companies where they were looking at other  
5 companies and asking you to estimate the liability  
6 of a potential acquisition target?

7 A One was.

8 Q Or any four companies where they were  
9 targets of acquisitions where they were asking you  
10 to provide some opinion that they could use in  
11 talking to a potential purchaser?

12 A Not to my knowledge.

13 Q Can you describe the other two contexts in  
14 some general way, if you can help us understand --  
15 if you knew why those companies wanted an asbestos  
16 estimate?

17 A I don't know. I mean, I know in one  
18 instance I was asked to do an estimate of another  
19 company because of an interest in either acquiring  
20 it or some assets from that company. In the others,  
21 it was for the particular companies and how they  
22 used it, I'm not sure.

23 Q Were any of those during the context when  
24 the Georgine settlement was pending, those estimates  
25 for companies?

1 A I think probably -- -- I'm not certain.

2 Q Do you think some of them may have been?

3 A Yes.

4 Q And did they involve companies that were  
5 participants in the Georgine settlement during the  
6 CCR?

7 A Not to my knowledge.

8 Q Have you ever given any specific weight to  
9 the Georgine settlement in any of the estimates  
10 you've done of asbestos liabilities?

11 A I don't understand your question.

12 Q Have you ever used the Georgine settlement  
13 terms to try to adjust your preferred estimate in  
14 some way for asbestos liabilities in any context?

15 A I've made estimates of liabilities under  
16 Georgine for the National Gypsum trust, but I  
17 believe I made alternative estimates -- I've made  
18 both tort estimates and Georgine estimates for the  
19 National Gypsum trust. I don't think I've ever  
20 tried to do some probabilistic weighting of them,  
21 no. I think that would have been an inappropriate  
22 thing to do.

23 Q Why would it be inappropriate?

24 A Because their liability is one or the  
25 other. Either the Georgine class action is approved

1 or not approved. So you can give both estimates and  
2 let the client determine what they do, but their  
3 liability isn't some function of a probability of  
4 the two of them. It's one or the other. One is a  
5 contractual liability, and one is a tort liability.

6 Q Have you formed any opinion on whether the  
7 management of GAF in 1994 should or should not have  
8 considered the Georgine settlement in making  
9 management decisions?

10 A I don't understand that question.

11 Q Yes. Let me try to ask it again. Have  
12 you formed any opinion in connection with your work  
13 that you expect to express on whether the management  
14 of GAF, in January of 1994, should or should not  
15 have considered the Georgine settlement in its  
16 analysis of its possible asbestos liabilities?

17 A I've not been asked that question, and I  
18 have not addressed that question. I don't know if  
19 I'll be asked that question at trial.

20 Q At this time, you have not formed an  
21 opinion on that one way or the other; right?

22 A I think I have an opinion.

23 Q What analysis have you done to reach that  
24 opinion, or is that an opinion based on your  
25 general knowledge of the situation in that time

1 context?

2 A You've asked me an either/or, and I can't  
3 answer it either/or. It wasn't either of those.  
4 The case was subadjudicate at the time of January  
5 1994. It wasn't the applicable law. It wasn't the  
6 final judgment. It -- whatever interest the company  
7 has in seeing what its liability might be under  
8 Georgine was their business. I can understand  
9 that's something of concern to the company.

10 So for their own internal purposes, I  
11 would expect they would want to do an analysis like  
12 that, as to what would be the liability under  
13 Georgine. One could do an analysis like that, but  
14 if you're interested in what is the likely  
15 obligation to tort victims at that point in time,  
16 that's established by the tort system.

17 Q You don't believe the lawyers who  
18 negotiated the class settlement for the class in  
19 Georgine were acting in bad faith, do you?

20 A No, I don't think so.

21 Q You don't think they misrepresented their  
22 views to the Court, do you?

23 A I don't know what their views to the court  
24 were. I haven't read them. They're honorable men.

25 Q Have you read the fairness hearing

1 proceedings in Georgine?

2 A No, I have not devoted that effort to it.

3 Q Never?

4 A It's very long. I've seen excerpts and  
5 statements from it, but I've not sat down and read  
6 the fairness hearing from end to end, no, of course  
7 not.

8 Q Would you agree that the negotiation  
9 between those plaintiffs' lawyers and the CCR  
10 defendants was an arm's length negotiation?

11 A Well, they represented different  
12 interests, and they were each trying to effectuate  
13 the purposes which were different. So I don't think  
14 it was collusive.

15 Q Well, is that different -- let me restart  
16 the question. Do you believe that each had  
17 differing economic interests in that negotiation?

18 A Well, of course, they had different  
19 economic interests. They had different interests,  
20 and they had some common interests.

21 Q What would be your definition of an arm's  
22 length negotiation?

23 A I don't know. I didn't use the term.

24 Q Do you ever used that term?

25 A I probably have.

1 Q Would you agree that the plaintiffs'  
2 lawyers who were representing the asbestos claimants  
3 in the plaintiffs' class in Georgine were  
4 sophisticated and experienced plaintiffs' lawyers?

5 A Oh, undoubtedly.

6 Q You don't think they were chumped by the  
7 CCR?

8 MR. FINCH: Object to form.

9 THE WITNESS: Well, they may have at some  
10 time in their lives. I don't know. They're bright  
11 guys.

12 BY MR. MILLER:

13 Q So would you agree that the value of the  
14 Georgine settlement was an indicator of what the  
15 Rice and Locks and other firms representing the  
16 plaintiffs' class at that time felt was, all things  
17 considered, in the best interest of their clients?

18 A I have no idea what that question is or  
19 how to answer it.

20 Q What don't you understand about it?

21 A What the value -- I just don't understand  
22 your question. It doesn't make sense to me. I  
23 don't know what you're asking me. I can't answer  
24 it.

25 Q The plaintiffs' firms that were



1 representing the class were going to get fees as  
2 class counsel as a part of the settlement; isn't  
3 that true?

4 A Yes.

5 Q Do you have any reason to believe that the  
6 plaintiffs' firms in that case were more interested  
7 in their fees than they were in the interest of  
8 their clients?

9 A I have no reason to believe that, although  
10 that is one of the criticisms of use of class  
11 actions. Class action is in a context like mass  
12 torts, and there are instances where it can be  
13 abused, but I don't have -- I'm not second-guessing  
14 their motives with regard to that issue, no.

15 Q In this particular settlement, the  
16 Georgine settlement, you've never seen any  
17 indication that the plaintiffs' lawyers were more  
18 interested in their own fees than they were in the  
19 clients to whom they owed fiduciary duties; isn't  
20 that true?

21 A One of the problems ultimately in the  
22 resolution of the case was the conflicts in the  
23 fiduciary duties that they owed to their present  
24 claimants and their future claimants and the fees  
25 that were generated by representing present

1 claimants. So it turned out to have been a  
2 considerable concern to the courts, as I recall,  
3 although I've not reread those decisions recently.  
4 So I think it was an issue. It became an issue.

5 Q And did you feel it was personally an  
6 issue at the time, or you're just saying that's what  
7 the courts said?

8 A I think these lawyers who who negotiated  
9 the future class action on the part of -- for the  
10 future plaintiffs thought they were doing the right  
11 thing, and in some respects, maybe they were.  
12 That's not the issue or the concern. The issue is  
13 is this -- it was ultimately -- it was a deal that  
14 had real problems with it, and it was a deal that  
15 was ultimately sunk by those problems. Many or all  
16 of those problems were known when they made the  
17 deal. It was a risk that people took at that time,  
18 and these kinds of issues were among the problems  
19 with the deal.

20 Q You are aware there were what are called  
21 future agreements between some of the defendants and  
22 the Center for Claims Resolution and some of the  
23 plaintiffs' law firms who entered into the Georgine  
24 class action settlement?

25 A There were terms as -- I think embedded in

1 other agreements, there were terms of agreements  
2 with regard to future claims between the lawyers and  
3 CCR, yes.

4 Q What was your understanding in the early  
5 '90s of the purpose for which those futures  
6 agreements were entered into?

7 A I don't understand your question.

8 Q Why do you understand that law firms were  
9 willing to enter into some sort of agreement dealing  
10 with their recommendations in the future in asbestos  
11 cases as of the early 1990s?

12 A Two answers to that. One, they were a  
13 part of an overall deal that got the present  
14 claimants represented by those law firms paid  
15 quickly in contrast to what likely otherwise would  
16 have happened. So it was a part of a deal. It was  
17 a term they agreed was a part of the deal. Beyond  
18 that, what were their purposes or objectives or  
19 expectations about that? I don't know.

20 Q Do you know whether the AFL-CIO supported  
21 the Georgine class action settlement?

22 A As it was ultimately amended, my  
23 understanding is that they did.

24 Q Do you know why they did that?

25 A I had no conversations with them. I don't

1 know.

2 Q Do you recall the statements they made at  
3 the time about why they supported it?

4 A I don't recall those, no.

5 Q Do you know whether any financial  
6 institutions factored Georgine into their analyst  
7 reports in early 1994?

8 A Other than the quotes that Dr. Martin  
9 included in her report, I don't recall having seen  
10 any, but I did read her rebuttal report and saw what  
11 she quoted.

12 Q Were you aware of that fact at the time  
13 you prepared your exhibit 1?

14 MR. FINCH: Aware of what fact?

15 BY MR. MILLER:

16 Q Were you aware that some analysts, as  
17 quoted in Dr. Martin's report, had referred to  
18 Georgine in their analysis of asbestos liabilities  
19 in early 1994?

20 THE WITNESS: I certainly wasn't -- don't  
21 recall the quotes that she had. I don't know that I  
22 really thought about it. I'd have expectations  
23 about what financial analysts might say, but I  
24 didn't consider it, and I don't recall having looked  
25 at it in particular. I don't think it's relevant.

1 BY MR. MILLER:

2 Q Don't you think it's relevant?

3 A Particularly, the statements she has are  
4 conditional. It's something that's obvious. If the  
5 deal goes ahead and gets finalized, then it has  
6 implications, and there's no doubt about that. It  
7 would have made more -- it would have had great  
8 benefits for members of the Center for Claims  
9 Resolution, including GAF. That's why they  
10 negotiated the deal. So any financial analyst would  
11 probably say if this happens, then it will have  
12 implications for investment decisions regarding  
13 these companies. I would be surprised if they  
14 wouldn't say something like that.

15 Q What great benefits would Georgine have  
16 had for GAF, as you understood it?

17 A It would have been primarily a way to  
18 control the timing of their payments. They would  
19 have had an orderly and agreed upon cash outflow for  
20 these liabilities that would have helped them with  
21 regard to financial planning. It would have reduced  
22 their liabilities.

23 I think the certainty in the reduction to  
24 exposure were -- it would have dampened the risks  
25 they faced with regard to large trial judgments. It

1 was a deal that was clearly favorable to -- had  
2 benefits for CCR members. That's why I, assume,  
3 they agreed with that, or they wouldn't have  
4 negotiated it.

5 Q Do you think it would have reduced the  
6 financial incentive for plaintiffs' law firms to  
7 invest in asbestos litigation?

8 A By itself, not necessarily.

9 Q What do you mean "by itself"?

10 A Well, if it became a model for Owens  
11 Corning and W.R. Grace and Pittsburgh Corning and  
12 other companies that were not members of the Center  
13 for Claims Resolution. Then ultimately the problem  
14 would have had some impact, but it would have  
15 affected one portion of the potential recoveries the  
16 people had. The possible spread of it would have  
17 had more of an impact, if it spread.

18 Q Did you read the District Court opinion in  
19 the Georgine case?

20 A I believe I did at the time.

21 Q Do you recall that the District Court in  
22 the fairness hearing found the terms of the  
23 stipulation of settlement were fair to the class as  
24 a whole?

25 A It had to have. Otherwise, it wouldn't

1 have approved the fairness of the deal.

2 Q Do you recall that the District Court  
3 found that they were -- the terms were reasonable,  
4 adequate, and fully justified by the evidence of the  
5 fairness hearing?

6 A The same answer.

7 Q They had to do that; right?

8 A Yes. It's a part of the decision for  
9 remedy, I guess.

10 Q Do you recall that there were some  
11 exposure requirements in the Georgine settlement?

12 A I do recall that there were exposure  
13 requirements, yes. Sitting here right now, I can't  
14 tell you what they were.

15 Q Do you recall that the District Court  
16 found that Georgine's exposure requirements served  
17 the purpose of compensating those who had actual  
18 exposure to asbestos, while excluding those with  
19 only trivial, i.e. not medically significant  
20 exposure?

21 A No.

22 Q Would you agree that the concept of  
23 compensating those who have actual exposure while  
24 excluding those with only trivial was a reasonable  
25 purpose for the plaintiffs' lawyers to try to pursue

1 on behalf of the plaintiffs' class?

2 A Well, it's a rarity that if someone  
3 doesn't have an exposure that's medically  
4 significant, they don't have a cause of action. So  
5 I guess it would be hard for anyone to disagree with  
6 that.

7 Q Do you recall that the District Court  
8 concluded the values and the compensation schedule  
9 of the Georgine settlement were a reasonable  
10 reflection of the CCR defendants' historical  
11 settlement averages from the tort system?

12 A I don't recall that.

13 Q Would you have any reason to question  
14 whether that was an appropriate finding?

15 A Well, I don't know the record in the case.  
16 I've not reviewed the transcript of the hearings. I  
17 don't know what evidence was provided to the Court  
18 about that issue. So I can't comment on it, on a  
19 decision with an evidentiary basis that I'm  
20 unfamiliar with. In the context of the evidence  
21 they had, it may have been an appropriate  
22 conclusion.

23 (Exhibit 3 identified.)

24 BY MR. MILLER:

25 Q I've handed you what's been marked as



1 Exhibit 3. It's 157 FRD page 246. It's, I believe,  
2 actually a Lexis print. And I'd like to ask you to  
3 turn with me to finding of fact number 95, which I  
4 believe is on -- it's on page 35 of this print, and  
5 I believe if we can find the pagination, it's on 277  
6 of 157 FRD. Will you turn with me to page 35 of  
7 this print?

8 A I have that.

9 Q I'm going to read it, the first sentence,  
10 and ask you if I've read it right. Paragraph 95  
11 says "Having reviewed the underlying documents  
12 provided to Class Counsel during the negotiations  
13 and accepted into evidence at the fairness hearing,  
14 and having found these documents to be accurate and  
15 valid, this court finds that the values in the  
16 Compensation Schedule are, indeed, a reasonable  
17 reflection of the CCR defendants' historical  
18 settlement averages from the tort system."

19 Did I read that correctly?

20 A You read it correctly, yes.

21 Q Have you ever done any analysis of the  
22 exhibits that are listed there to see whether you  
23 believe they are or are not a reasonable reflection  
24 of the CCR defendants' historical settlement  
25 averages from the tort system?

1           A     I'm sorry. Could you either restate,  
2     re-ask the question or read it to me?

3           Q     Yeah, I'll try to restate it. You were  
4     doing various kinds of analyses in the early '90s up  
5     through the present of asbestos liability --

6           A     Yes.

7           Q     -- for lots of different purposes; right?

8           A     Yes.

9           Q     In any of your analyses, have you ever  
10    formed an opinion one way or another as to whether  
11    the values in the compensation schedule in the  
12    Georgine settlement which are referred to there are  
13    indeed a reasonable reflection of the historical  
14    settlement averages from the tort system of the CCR  
15    defendants?

16          A     So you're asking me if I've drawn any  
17    inferences about whether the compensation schedule  
18    values were a reasonable reflection?

19          Q     Right.

20          A     I recall having looked at that issue in a  
21    contemporaneous with this and having been concerned  
22    that they didn't, but I don't recall the specific  
23    analysis that I did. It's just something I recall  
24    having done and looked at in somewhat -- something I  
25    was just interested in at the time. I've looked at

1 an exhibit that Dr. Martin attached to her report  
2 that further troubles me, and when I look at the  
3 historic averages of GAF, that it was paying prior  
4 to and contemporaneous with the negotiation of the  
5 Georgine class action, that they didn't seem  
6 consistent to me to be -- they did not seem  
7 consistent with the amounts that were in the deal,  
8 though I don't think any of -- I have not set out to  
9 make a definitive comparison of this. I just have  
10 concerns, although I do think that the document that  
11 Dr. Martin attached supports that concern.

12 Q Which document are you referring to in  
13 Dr. Martin's report?

14 A Well, I don't have her report, but she  
15 did -- I can describe it. There is a --

16 Q I'll mark the report and let you find it.  
17 Wouldn't that be easier for you?

18 A Thank you. It would be easier.  
19 (Exhibit 4 identified.)

20 BY MR. MILLER:

21 Q You've been handed Peterson Exhibit 4  
22 entitled "rebuttal report of Denise Neumann Martin."  
23 Is that the report you were referring to in your  
24 previous answer?

25 A Yes, and thank you for providing it to me.

1 Q Would you turn to whatever the document is  
2 that you're referring to and identify it for the  
3 record?

4 A It's Exhibit 3 attached to the end of the  
5 report.

6 Q This is titled "Georgine class action  
7 values were in line with historical averages as  
8 reflected by contemporaneous CCR documents."

9 Did I read that correctly?

10 A That's correct.

11 Q Have you done any analysis to try to  
12 evaluate this report that is in writing somewhere?

13 A No. I just looked at it and reached  
14 conclusions based upon this exhibit but not reduced  
15 into writing.

16 Q Let me ask you, did we end up getting a  
17 staple and get to some of those -- that exhibit that  
18 we marked separately put together or not?

19 MR. FINCH: I gave it to you, and you  
20 marked it as Exhibit 2. I didn't staple it.  
21 There's probably a stapler behind Denise Martin in  
22 the drawer there.

23 BY MR. MILLER:

24 Q You still have in front of you Exhibit 2,  
25 which is this collection of papers, Dr. Peterson?

1 A It's getting buried, but yes, I have it.

2 Q And yours is clipped; right?

3 A Yes, mine is clipped, and each individual  
4 analysis is further clipped.

5 Q Does this analysis have anything to do  
6 with the issue we are now discussing, which has to  
7 do with the historical values of the CCR as compared  
8 with the Georgine settlement?

9 A Let me look at it for a moment.

10 Q Yeah, please, do.

11 A Yes, I believe it has relevance to this as  
12 one of the matters that gave me concern.

13 Q What part of this are you referring to?

14 A It's the third of the three of these  
15 subdocuments, but it's essentially the third page  
16 from the end of the whole packet of materials. It  
17 has a horizontal line at the top.

18 Q What is the purpose of this analysis that  
19 we're looking at? This is titled by the way so  
20 we're clear, the first line of text is "settlements  
21 when filing year greater than or equal to 80?

22 A Yes.

23 Q Please describe for us first what this  
24 document is, if you would, please.

25 A This document is the standard run we use

1 just to -- we call it our AOUT file for some reason,  
2 and it's simply a summary of the relevant statistics  
3 with regard to claims filings and resolutions for  
4 this defendant, GAF, but we've run similar analyses  
5 for other defendants. It's our background  
6 information wanted so that's essentially -- it's  
7 taken from the GAF database, and the particular page  
8 that I made reference to, at the bottom of it  
9 has "average settlements." When the filing year is  
10 greater to or equal to 1980, we excluded cases that  
11 were filed prior to 1980. I think there were just a  
12 few.

13 There was some concern about garbage data  
14 that had a filing date earlier than that. Then it  
15 reflects the average amount paid to claimants when  
16 they received the money for each of the four disease  
17 categories plus unknown disease claims by year and  
18 then by -- the last row is the period of four years,  
19 1990 to '93. That's the page that I would refer you  
20 to in the particular table.

21 Q The left-hand column is titled "CO," and  
22 it seems to have B-93 under it all the way down.

23 A Yes, it's cohort. It's the claims data  
24 pertinent to claims through 1993.

25 Q When was the CCR formed?

1 A 1988.

2 Q And do you know when GAF joined the CCR?

3 A I believe they joined them right way.  
4 They were a latecomer to ACF, but my recollection is  
5 they were one of the original members of CCR.

6 Q That was my next question. The ACF was  
7 the asbestos claims facility; is that correct?

8 A Yes.

9 Q And it was another collective group that  
10 dealt with asbestos claims on behalf of defendants;  
11 is that true?

12 A And insurance companies, yes. It had  
13 insurance company members.

14 Q Do you know when GAF joined the ACF?

15 A I believe they joined them in late '87 or  
16 early '88. It was -- it might have been '87.

17 Q So some of the data here for filing year  
18 greater than or equal to 80 would precede the entry  
19 of GAF in either the ACF or the CCR; is that true?

20 A Some of the claims -- well, if you turn  
21 back to the first page of this section, it shows  
22 filing years, and were claims filed prior to 1987  
23 certainly.

24 Q Back to the reason you identified this,  
25 how does this document that we are looking at that

1 you've identified impact whatever analysis you might  
2 have done with regard to Exhibit 3 to what's been  
3 marked Peterson Exhibit 4?

4 A I'll answer your question. Let me kind of  
5 just take issue with a word that you've been  
6 using, "analysis." These are more on the lines of  
7 observations. I did not sit down and set out to do  
8 an analysis of the appropriateness of the class  
9 action settlements in Georgine. It wasn't something  
10 that I felt was relevant or necessary for what I'm  
11 doing, either now or in 1994.

12 But these are observations that I've made  
13 just looking at these CCR blended averages were and  
14 how they compared to other historic data about GAF  
15 settlements. And with regard to exhibit 3 that  
16 Dr. Martin provided, that CCR's statements about  
17 what its historic averages were. So these are more  
18 observations. This is not something that's a part  
19 of my report.

20 Q Do you have any analysis that has allowed  
21 you to quantify in anyway a conclusion about the  
22 work done in Exhibit 3 to Peterson Exhibit 4?

23 A Well, first of all, on its face, Exhibit 3  
24 is not -- it's an apples and orange comparison. The  
25 class action blended averages are the amount that is



1 anticipated would be paid to claimants who receive  
2 compensation. The figures on the right, the CCR  
3 historical averages, are cases that includes zeroes  
4 in there.

5 So this is not a comparison with what  
6 people received historically from CCR when they got  
7 paid. It's what happens when you include people  
8 that don't get paid, too. So it underestimates the  
9 amount of money that was paid historically to  
10 claimants and is not an appropriate comparison. So  
11 that's one concern. I don't think -- if this is the  
12 basis for the court's decision, it's an  
13 inappropriate basis, and it's not a -- and the way  
14 that Dr. Martin attempts to use this exhibit in her  
15 report, it's not -- it doesn't carry her point.

16 But the other concern I have is that if  
17 you look at what the historic averages that were  
18 paid by GAF during the years prior to -- during the  
19 period of years shown at the bottom of the table I  
20 showed you, they're roughly in the order of 40 to 50  
21 percent of the -- what is purported to be the  
22 historic average payment by CCR, and that is  
23 inconsistent with the representation that in this  
24 period of time, GAF was paying either roughly 28  
25 percent or 20 percent of the overall CCR liability.

1           If you use the 20 percent figure, that  
2 means the amount paid by CCR would be 5 times the  
3 amount overall -- or not in every case. Maybe it  
4 wouldn't be 5 times, but it would be a significant  
5 multiple of the amounts that GAF paid.

6           So these two sets of data don't seem  
7 consistent to me. They're troublesome. Now, that's  
8 all I've done. I haven't looked further at it. But  
9 it is of some concern. That's the observations.  
10 You have the extent of my observations.

11           Q     Trying to break that down for a moment,  
12 first, you said that you believe this is an apples  
13 and oranges comparison. Do you recall that part of  
14 your answer?

15           A     Exhibit 3 is, yes.

16           Q     Would you explain to us why you believe it  
17 is inappropriate to include the zero dollar  
18 dispositions in the averages?

19           A     It's an appropriate step for some  
20 purposes, but not for the comparisons. Because,  
21 here, the title of this document, Exhibit 3,  
22 represents comparison between what the Georgine  
23 average settlements would be and what the historic  
24 averages were. The Georgine are truly averages.  
25 They're averages that they expect would be paid to

1 people who will receive money, qualifying claims.  
2 The historic averages are averages of both people  
3 who get money and people who don't get money. And  
4 there are some people that didn't get money.

5 So you're comparing here what's the  
6 historic average to pay all claimants, whether or  
7 not they get paid, in order to assess how much money  
8 should be paid to people when they get paid.

9 (Exhibit 5 identified.)

10 MR. FINCH: What is this? Peterson 5?

11 MR. MILLER: Yes, Peterson 5.

12 BY MR. MILLER:

13 Q I've handed you what's been marked  
14 Peterson Exhibit 5, and this was previously marked,  
15 I will represent to you, in the fairness hearing as  
16 SP601(C), one of the documents referred to in that  
17 passage we were reading from the Court.

18 Have you seen this document before?

19 A Yes.

20 Q You will note that the class action  
21 blended average column in this exhibit is identical  
22 to the numbers listed on Exhibit 3 in Dr. Martin's  
23 rebuttal report, marked Peterson Exhibit 4; correct?

24 A It is identical, yes.

25 Q Do you know how the CCR calculated these

1 numbers? Do you recall that?

2 A Which numbers?

3 Q The class action of blended average  
4 column.

5 A It's explained -- Dr. Martin explains it  
6 in her report.

7 Q Have you seen that exhibit SP601(B)  
8 before, or would you like to see a copy of it?

9 A SP601(B)?

10 Q Yes. That's document referred to in  
11 footnote 2 that explains how it was calculated.

12 A Oh, I'm sorry. No, I'll accept that  
13 that's a correct representation. I think I've seen  
14 something like that elsewhere. Actually, I would  
15 like to see it if you have it.

16 Q Yes.

17 A Why not.

18 (Exhibit 6 identified.)

19 THE WITNESS: Thank you.

20 BY MR. MILLER:

21 Q Do you see that that was a blending of  
22 averages related to so-called nonextraordinary and  
23 extraordinary claims?

24 A Yes.

25 Q Do you recall what the extraordinary

1 claims category was that was being dealt with in the  
2 fairness hearing?

3 A As I recall -- I recall treatment of  
4 extraordinary claims, that there was -- these are  
5 the maximum number of claims that qualify for  
6 extraordinary treatment. I believe there was a  
7 panel that would approve the claim being treated as  
8 an extraordinary claim. What the criteria were to  
9 be applied for each of these diseases to determine  
10 extraordinary is, I don't recall.

11 Q You see the column labeled 4 is  
12 entitled "mean excluding top 5 percent and bottom 5  
13 percent"?

14 A I'm sorry. Now we're back where?

15 Q Back on Exhibit 3.

16 A Okay, yes.

17 Q You will notice that that is also a column  
18 taken straight from SP601(C). Do you see that?

19 A Yes. Well, I mean, Exhibit 3 just  
20 accurately reproduces what's now Exhibit 5 in this  
21 deposition.

22 Q Right.

23 A I didn't -- I never doubted the accuracy  
24 of Exhibit 3 with regard to representing what was in  
25 the CCR document.

1 Q Do you know whether excluding the bottom 5  
2 percent would exclude all of the zero payments or  
3 some of the zero payments or how that would work?

4 A My understanding that that step excludes  
5 people who -- among those who got paid, it's the  
6 lowest 5 percent of the claims and the highest 5  
7 percent of the claims. That's my understanding.  
8 It's inappropriate, but I understand it.

9 Q Why is it inappropriate?

10 A Well, because those represent liabilities,  
11 and it biases the numbers downward, obviously. One  
12 of the -- these are skewed distributions, and so  
13 there are a number of people who have quite large  
14 historic resolution amounts, and if this is supposed  
15 to be a representation of the overall liabilities,  
16 you need to include those large settlements as well.

17 Q You recall we looked at the District  
18 Court's opinion? Would you turn with me back -- and  
19 this is Exhibit 3 -- back to finding of fact 95.

20 A Just a moment, please.

21 Q I believe we decided it was on page 35, if  
22 I recall that correctly.

23 A I'm on page 35, paragraph 95.

24 Q You will notice that the middle of that  
25 sentence we read, the Court states that having found

1 these documents to be fair -- I'm sorry. I  
2 misspoke. Finding of fact number 95 starts  
3 with "Having reviewed the underlying documents  
4 provided to Class Counsel during negotiations and  
5 accepted into evidence at the fairness hearing, and  
6 having found these documents to be accurate and  
7 valid."

8 Do you see that part of the sentence?

9 A Yes.

10 Q You'll notice that one of the exhibits  
11 cited thereafter is this SB601(B) document --

12 A Yes.

13 Q -- that we have.

14 A Yes.

15 Q Do you disagree with the Court's finding  
16 that this SB601(B) is a accurate and valid document?

17 A 601(B)? I have no reason --

18 Q Yes.

19 A I have no reason to believe that it's an  
20 inaccurate document.

21 Q And is the same true of 601(C), which is  
22 also in this group, that you have no reason to  
23 believe it's not accurate and valid?

24 A I'm not sure it's an accurate document,  
25 and I don't know what it means. Actually, it does

1 indicate period of time. I have concerns about its  
2 accuracy, but I haven't been able to investigate it.  
3 I have not investigated it. I chose not to  
4 investigate it. I just have concerns.

5 Q And you don't have it on your assigned  
6 list to investigate it further, do you?

7 A I'm likely to look at it more after this  
8 deposition, but it wasn't -- as I said before, this  
9 is not a central issue with regard to any opinions I  
10 expressed either in my report or expect would  
11 express in the trial in this matter.

12 Q It's not a central issue because you're  
13 not using Georgine directly for any of your  
14 calculations?

15 A That's not necessarily -- I mean, it could  
16 still have been important if it's a reason for  
17 disregarding the use of Georgine. I mean, this is  
18 not a basis for having disregarded Georgine. Its  
19 relevance really is to the fact that -- this  
20 document would suggest that there is not much  
21 difference in what the CCR members would have to pay  
22 overall under Georgine or without Georgine. If  
23 they're paying the same amount of money, then it  
24 makes no difference to them other than they're able  
25 to get rid of some nonmalignant claims.



1           Actually, that's another issue that I  
2   should return to. But clearly, Georgine was seen as  
3   something that would save the CCR members money. So  
4   there's sort of a failure to track here. So it's  
5   relevant if I were asked to talk about -- if you  
6   asked me on cross-examination how this benefited  
7   claimants -- how the Georgine benefited CCR members  
8   and I said earlier I believed it saved them money.  
9   One of the reasons I believed it saved them money is  
10   because I believe they were paying more money  
11   historically to resolve claims than the scheduled  
12   values here. This seems to contradict what I'm  
13   saying, but the evidence that I have, at least from  
14   GAF, is not consistent with this table, but with  
15   this document SP601(C).

16           Q     What is the evidence you have from GAF  
17   that you think is not consistent with this document?

18           A     It's what the historic average resolutions  
19   were for GAF for mesothelioma that I already pointed  
20   you to. It showed where you they were paying  
21   somewhere on the order of 25 to \$33,000 per claim on  
22   average for mesothelioma.

23           Q     And is that back in your exhibit --

24           A     5, I think it's called.

25           Q     It was Exhibit 2, wasn't it, that we --

1 A I'm sorry, Exhibit 2.

2 Q Your additional materials you provided  
3 today?

4 A I beg your pardon. That's correct. It's  
5 Exhibit 2, yes.

6 Q Is that only on that third page from the  
7 back, the evidence that shows it's not consistent?

8 A I'm sorry. I don't understand your  
9 question.

10 Q Yeah. Is there any place else in Exhibit  
11 2 that you have evidence of these averages that you  
12 think is not consistent with what's on Peterson  
13 Exhibit 5?

14 A That's the primary place. That's where I  
15 would look to.

16 Q Is there someplace else that is not  
17 primary that you can point to as you sit here?

18 A In this document, I don't believe so.

19 Q In any document that you've produced?

20 A Again, there's the -- that I produced?  
21 No, but I think it's inconsistent -- the additional  
22 information comes from what Dr. Martin produced in  
23 her rebuttal report.

24 Q We're running out of tape, but instead of  
25 just breaking for lunch, before we do, I'd like

1 maybe a few minutes on the next tape to make sure I  
2 know what the rest of these new documents are about  
3 so we can talk about them at lunch, if that's all  
4 right. Let's go off the record. But let's just do  
5 a quick tape change, and then we'll break for lunch.

6 VIDEO OPERATOR: We're off the record.

7 The time is approximately 12:48.

8 (Discussion off the record.)

9 VIDEO OPERATOR: We're back on the record.  
10 The time is approximately 12:50 p.m.

11 BY MR. MILLER:

12 Q On your Exhibit 2, what data tape were you  
13 working with?

14 A It was the -- let's see. The data tape  
15 that was referenced in our report is the same data  
16 tape.

17 Q Is that 2002? 2004? Or when was it  
18 produced?

19 A It was the September 30, 2002, data that's  
20 referenced on page 9, section 5 of Peterson 1.

21 Q How did you try to limit that to data  
22 available in 1994?

23 A We looked only to claims that were filed  
24 before 19 -- January 1994. Actually, it's through  
25 1993, and settlements that were reported as having

1    been settled before December 31st -- on or before  
2    December 31st, 1993.

3           Q     You didn't have dates when specific  
4    disease categories were added to the database, did  
5    you?

6           A     I don't think the database reflects that,  
7    no.

8           Q     So you don't know, for example, as of 1994  
9    which of the pending claims would have still been in  
10   the category of unknown disease, do you?

11          A     On that date, no, we don't know.

12          Q     What is the reason that you did these  
13   calculations in Exhibit 2 that we were just given  
14   last night?

15          A     Just to provide data on issues that either  
16   we had looked at and not provided in Peterson 1 or  
17   issues that were raised by Dr. Martin in rebuttal  
18   report.

19          Q     Let's take those two categories. Which  
20   issues did these provide data on that you had looked  
21   at but not provided before?

22          A     Well, some of it had been provided, but  
23   the last of these three documents, the one I drew  
24   your attention to before that has the top row  
25   filings and then below CO is the first column, that,

1 as I said, is the general form, and that just  
2 provides the complete data with regard to the annual  
3 filings of claims, the averages by year, the percent  
4 of claims with each year that were resolved with  
5 payment, and other matters. So although we  
6 discussed settlement values and provide in the  
7 report the averages across the period '90 to '93,  
8 this breaks it down on a year-by-year basis. It's  
9 essentially the first level of results and --

10 Q Which of your issues did that provide  
11 support for?

12 A This is just a general document. I don't  
13 think it -- it isn't aimed at any particular point,  
14 although obviously, I mean, the claim filings they  
15 speak to the historic claims filings and  
16 propensities to sue. But it's essentially an  
17 attempt to provide complete information about issues  
18 that were in the report. The average settlements  
19 and the percent of claims paid and the average  
20 dispositions were all discussed in the report, but  
21 this provides more detail about that. So it's  
22 just -- it's an elaboration of data that were used  
23 in the report.

24 Q It was all data that was available to you  
25 at the time you did the report; is that true?

1           A     Yeah, but that's not why they're provided.  
2     It's the compilation of results, kind of a more  
3     specific disaggregated and detailed results. But it  
4     is based on all the data that were available to us,  
5     yes.

6           Q     And my question is, you didn't receive any  
7     data after the date of the report that is being  
8     included in this for the first time; is that  
9     correct?

10          A     That's correct.

11          Q     And you say this is what you call the AOUT  
12     print?

13          A     Yeah. For some reason that's what this  
14     form of report is called by Dan Relles.

15          Q     Do you normally provide this as support  
16     for your reports?

17          A     Typically not, but there was -- the  
18     report, for example, didn't include a year by year  
19     statement of what the settlement averages were. We  
20     just provided the settlement averages for a group of  
21     years. I thought there may be at some point an  
22     issue with regard to the year-by-year settlement  
23     averages. I wanted to provide this in case either  
24     during the deposition or the trial that matter came  
25     up, you'd have what we understand that to be.

1 Q What issues raised by Dr. Martin did you,  
2 in her rebuttal report, I think you said, did you  
3 want to deal with in the materials that are now  
4 Peterson Exhibit 2?

5 A Issues of what she calls acceleration,  
6 issues of the effects of age, both filings and  
7 settlement averages, I guess the issue of the --  
8 that Dr. Martin raised about the correspondence and  
9 value of the Georgine values to what was paid  
10 historically that we've been discussing the matter  
11 is also addressed in the settlement materials.

12 Q First of all, let's take the last one.  
13 This issue of correspondence to the value of  
14 Georgine and what was paid historically, is that  
15 anything different than this third page from the  
16 back that we've looked at?

17 A No.

18 Q Acceleration, what part of these documents  
19 in exhibit 2 have to do with acceleration?

20 A It's the first two pages, the page that  
21 has g3 at the top left.

22 Q Okay. What conclusions or opinions do you  
23 draw from those first two pages?

24 A That there is no evidence of acceleration  
25 as Dr. Martin discusses in her report, either among

1 nonmalignant or cancer claims.

2 Q What do you look at in these two pages  
3 that lets you reach that conclusion?

4 A These tables are cross-tabs between the --  
5 shows for each filing year, which are represented on  
6 the columns, the number of claims that were  
7 diagnosed in that same year, which is the zero  
8 column, the number that were diagnosed in the  
9 previous year, which is 1, 2 years ago, 2 and so  
10 forth. So it's a correspondence of diagnosis and  
11 year of filing. The second page is the same as the  
12 first, but it's in terms of percentages rather than  
13 numbers, where the percentages are calculated for  
14 each filing year across the row. That's the data  
15 that are shown here. And it's disaggregated for the  
16 nonmalignant and cancer claims. Did I answer your  
17 question? I'm not sure.

18 Q Well, how do you -- what do you look at in  
19 here to try to support the conclusion that there is  
20 no acceleration?

21 A Well, Dr. Martin essentially -- if you  
22 look on the second of these two pages in the  
23 nonmalignant group, Dr. Martin provided some results  
24 and discussed a pattern essentially shown in the  
25 column -- zero column for the nonmalignants, which



1 for 1993, it shows that 42.2 percent of the claims  
2 that were filed in '93 were also diagnosed in '93.  
3 For 1992, 46.3 percent of the claims that were filed  
4 in 1992 were diagnosed in 1992.

5 Those are higher than the preceding four  
6 years, five years really, where the percentages were  
7 between essentially 24 percent and 34 percent of the  
8 claims filed in those years were diagnosed in the  
9 same year. From this, she inferred that people are  
10 accelerating the time for filing of nonmalignant  
11 claims.

12 There was evidence that in 1991 and 1992,  
13 claimants were filing more quickly in order, I  
14 guess, to escape the Georgine class action. It's an  
15 issue that I also discussed in my report. So that's  
16 the data she uses to draw -- it's the empirical  
17 basis for her conclusion. But if you look at it,  
18 the abhorrent years are not 1992 and 1993. The  
19 abhorrent years are the four preceding years, and  
20 indeed, in most years, most nonmalignant claimants  
21 are filed in the year they're diagnosed.

22 So this doesn't demonstrate anything  
23 unusual about 1992 and 1993. Instead, it reflects  
24 that during the prior four years, there were a lower  
25 percentage of claims filed in those years that were

1 actually diagnosed in that year. And there are  
2 reasons for that reduction based upon what was  
3 happening concurrently in asbestos litigation. So  
4 essentially, she's selected partial results to  
5 support her conclusion that are misleading and that  
6 are not consistent with the whole record, and that's  
7 why I produced this.

8 Q What were the reasons for that reduction,  
9 in your view, in the prior four years?

10 A Well, I have to make a general comment,  
11 that the asbestos litigation is in some sense a  
12 system. No single asbestos defendant operates  
13 independently with what's going on with regard to  
14 other defendants.

15 So I've discussed this before. The fact  
16 that huge settlement class action -- that huge  
17 consolidations are settled in one state, for example  
18 Baltimore, means that defendants don't have much  
19 money to settle claims in other states. So patterns  
20 like that, how particular defendants or particular  
21 plaintiffs are affected themselves depends upon what  
22 happens elsewhere in asbestos litigation. During  
23 1980 -- that was the prefatory comment.

24 Let me give you the specifics. During  
25 1988 and 1989, Manville trust had come out of

1 bankruptcy, finally after 5 years. The current  
2 bankruptcy is a short time, but at that point in  
3 time, people regarded it as an endless bankruptcy,  
4 and it had a deadline. Claimants had to file claims  
5 by 1989. It was essentially a bar date.

6 So the plaintiffs' law firms were  
7 concentrating their filings on Manville, to get them  
8 in, both because they were finally getting some  
9 money on Manville, 100 cents on the dollar, and  
10 indeed, the forward-looking claimants' lawyers  
11 wanted to get those claims filed as quickly as  
12 possible because of Manville's queue and because of  
13 the likelihood that Manville would run out of money,  
14 Manville trust.

15 So for all those reasons, there was a  
16 concentration among the plaintiffs' bar filing in  
17 1988 and '89. So other defendants like CCR members  
18 and GAF, in particular, would have had a reduction  
19 of claims. Of those diagnosed in that year, they  
20 would tend to be filed in later years because the  
21 plaintiffs' lawyers were concentrating on getting  
22 Manville claims filings.

23 In 1990 and '91, you had bankruptcy  
24 petitions by four other major asbestos defendants in  
25 those years, and in particular, you had a lot of

1 action going on with regard to Eagle-Picher in 1990.  
2 So lawyers again, fearing getting caught up in  
3 another long morass of bankruptcy litigation like  
4 they just experienced for Manville, tried to get  
5 their claims filed and resolved by those defendants  
6 before the bankruptcies occurred.

7 So there was a concentration on these  
8 other defendants. And it's likely that other  
9 matters intruded, but at a minimum, those things  
10 were going on, which were directing attentions and  
11 activities of plaintiffs' lawyers away from GAF,  
12 which is probably the reason why you get a lower  
13 percentage -- you get the pattern of results you see  
14 here. So it's something peculiar about those years  
15 that can explain this, not necessarily the inference  
16 that Dr. Martin proposed.

17 Q Any other part of this document that has  
18 to do with acceleration?

19 A The only other is -- and it's not an issue  
20 that Dr. Martin raised, I think appropriately, that  
21 there isn't much indication even in these data of  
22 acceleration of cancer claims. Cancer claims can  
23 not to be accelerated in situations where it's  
24 occurs. Non-malignant is more discretionary when  
25 claims are filed. That's the only observation I

1 make of this.

2 Q What in this document had to do with  
3 effects of age on both filings and averages?

4 A It's the second set of materials, both  
5 that are labeled as filings at the top, and the  
6 first row is DSE, an abbreviation for disease, and  
7 the first column is mesothelioma. That's 14 pages  
8 that have the same -- are structured in the same  
9 way.

10 Q Let's separate it with regard to  
11 settlement averages first. What do you look at here  
12 in the way of analysis of the effects of age on  
13 settlement averages?

14 A Well, again, this is a cross-tabulation.  
15 Actually, it's a three-way cross-tabulation within  
16 each of the disease categories, mesothelioma, lung  
17 cancer, other cancer, nonmalignants, plus a group of  
18 cancers with aggregated data across the three  
19 cancers, and then finally all claims, that they data  
20 are aggregated in those ways, disaggregated. Again,  
21 the rows are the settlement year, and the columns  
22 are now the ages of the claimants. At the time of  
23 filing where it's -- no, I think it's age of  
24 settlement where the ages are broken out into four  
25 categories, those who are less than 61 in the first

1 column, which is age 00-60, those who are in their  
2 60s, 61 through 70, those who are 71 through 80, and  
3 those who are 81 or older.

4 If you look on the second page, there's an  
5 average settlement amount, and it shows within each  
6 of these groups what is the average amount paid in  
7 settlement for settlements reached in each of these  
8 years among people in each of these various age  
9 groups. It shows a finding that Dr. Martin observed  
10 in her -- a general finding that Dr. Martin observed  
11 in her report, that in the period of 1988 through  
12 1993, that people in the ages who were under 61  
13 years old tended to get larger mesothelioma  
14 settlements.

15 But it also shows other things. It shows  
16 that the settlement averages were increasing for all  
17 categories, but particularly for the oldest people.  
18 The oldest claimants have the greatest acceleration  
19 and increase in the settlement values of  
20 mesothelioma claims, which it is an indication --  
21 actually, there's also -- it is an indication that  
22 the differences in age groups were decreasing over  
23 time, because the oldest people were getting  
24 relatively less money.

25 If also showed that settlement values

1 tended to go up over time within each of these  
2 groups with the greatest increase occurring among  
3 the oldest people. So it indicates to the degree  
4 there are differences among mesothelioma claimants  
5 and the average amount that they get, that decrease  
6 is diminishing, and in any event, the oldest people  
7 were getting paid more and more money all the time.

8 Q Well, it still shows, if we look, for  
9 example, for the '92 settlement year, that the  
10 average for the under 60 group was \$59,467; is that  
11 right?

12 A That's correct.

13 Q But for 81 and over, it was \$34,397;  
14 right?

15 A That's correct.

16 Q So it's a difference of a little over  
17 \$25,000; right?

18 A Yes, but it's less of a difference than in  
19 1988 or 1989 when there was a four-fold differences  
20 in the averages. So the differences between these  
21 groups are diminishing. But that's -- that's the  
22 only disease where this pattern occurs. .

23 All of the diseases, the older people  
24 either got more money or they got -- they've got  
25 similar amounts of money during this period of



1 years, and that's shown for lung cancer, other  
2 cancer, nonmalignants. And across all claimants,  
3 which is -- Dr. Martin took the one case where there  
4 is some age effect and ignored the other diseases  
5 where there wasn't an age effect and criticized me  
6 for showing the data overall.

7 But it's the overall age that's important,  
8 because the liability of this defendant is based  
9 upon its liability across all claims, not just  
10 mesothelioma. When you look at all claims, which is  
11 towards the end of this, in the second to last page,  
12 you'll see that the oldest claimants, which is the  
13 second from the right-most column, during the period  
14 '80 eight to '89, the oldest --

15 Q Can you help us find that? Next to last  
16 page of what? Of this subset?

17 A Of this section. It has all in the first  
18 column, and it's all in the first column and the  
19 bottom is average settlement, the bottom table. I'm  
20 sorry. These should have been numbered, but we just  
21 kind of knocked these things out.

22 Q I'm sorry. I'm still trying to find  
23 these. Let's do it from the back of the whole deal.

24 A The back of the whole deal looks like  
25 this, it has all average dispositions on a partial



1 page. I think you've gone too far.

2 Q I think I've gone back to the prior  
3 document. Is this --

4 A This is actually a relevant issue here.  
5 No. Do you want me to find it for you?

6 Q I wonder if they're the same copies here.  
7 Actually, I found it now. Is this the right page  
8 now?

9 A Oh, yes, that's right. Here is the number  
10 of people that had resolutions, but this is the  
11 average settlements amount, that page. Let me  
12 restate it. If you --

13 Q All right. So what is the point you were  
14 making about what that shows?

15 A Across all diseases, across all  
16 resolutions, all claims that were settled, the  
17 average amounts paid to the oldest claimants were  
18 more than the youngest claimants, and that's shown  
19 in the age 81 and above where -- and I'll read  
20 the -- in 1992 again, they received, on average,  
21 \$10,866. People that were just younger, in their  
22 70s basically, got 9,310. People in their 60s got  
23 7,481. People that were under 60 got 6,877.

24 Q That is reflecting, in part, the fact that  
25 mesothelioma was much more likely to be present in

1 somebody who was 81 or older than under 60; isn't  
2 that true?

3 A No, it would be the converse actually.

4 Q Mesothelioma was more likely 60 or  
5 younger?

6 A There were more mesothelioma settlements  
7 among younger people than older people. That's why  
8 you observe this pattern. In every age group, there  
9 were more. There may be a different distribution,  
10 yes. I think that's a fair statement.

11 Q What's a fair statement?

12 A That the distribution of settlements may  
13 differ by age group. Yes, that's a fair -- and  
14 that's why I presented the information by each of  
15 these diseases.

16 So for one of the diseases, meso, there  
17 appears to be a diminishing age effect. On the  
18 other hand, the overall meso average is going up  
19 over time, even though the age distribution is going  
20 up over time. So essentially, the empirical data  
21 just don't support a conclusion that either within  
22 this period of time or in the future, that  
23 settlements will be going down because of the  
24 population aging. In fact, other than mesothelioma,  
25 there's a reason to believe settlement amounts would